

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Tsigel	Team: Squad #4	CCRB Case #: 202002992	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/28/2020 6:26 PM	Location of Incident: In front of 2525 Aqueduct Avenue	Precinct: 52	18 Mo. SOL 10/28/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 04/30/2020 2:17 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 04/30/2020 2:17 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Steven Torres	19874	962846	052 PCT
2. PO Ariel Eusebio	19648	958565	052 PCT
3. LT Hugh Mackenzie	00000	925647	052 PCT
4. PO Paul White	25819	947872	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.PO Paul White	Abuse: Police Officer Paul White stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Steven Torres	Abuse: Police Officer Steven Torres stopped the vehicle in which § 87(2)(b) was an occupant.	
C.PO Ariel Eusebio	Abuse: Police Officer Ariel Eusebio stopped the vehicle in which § 87(2)(b) was an occupant.	
D.LT Hugh Mackenzie	Abuse: Lieutenant Hugh Mackenzie stopped the vehicle in which § 87(2)(b) was an occupant.	
E.PO Paul White	Abuse: Police Officer Paul White questioned § 87(2)(b)	
F.LT Hugh Mackenzie	Abuse: Lieutenant Hugh Mackenzie questioned § 87(2)(b)	
G.PO Ariel Eusebio	Abuse: Police Officer Ariel Eusebio frisked § 87(2)(b)	
H.PO Paul White	Abuse: Police Officer Paul White searched the vehicle in which § 87(2)(b) was an occupant.	
I.POM Steven Torres	Abuse: Police Officer Steven Torres searched the vehicle in which § 87(2)(b) was an occupant.	
J.PO Ariel Eusebio	Abuse: Police Officer Ariel Eusebio searched the vehicle in which § 87(2)(b) was an occupant.	
K.LT Hugh Mackenzie	Abuse: Lieutenant Hugh Mackenzie searched the vehicle in which § 87(2)(b) was an occupant.	
L.PO Paul White	Abuse: Police Officer Paul White damaged § 87(2)(b)'s property.	
M.POM Steven Torres	Abuse: Police Officer Steven Torres damaged § 87(2)(b)'s property.	
N.PO Ariel Eusebio	Abuse: Police Officer Ariel Eusebio damaged § 87(2)(b)'s property.	

Officer(s)	Allegation	Investigator Recommendation
O.LT Hugh Mackenzie	Abuse: Lieutenant Hugh Mackenzie damaged § 87(2)(b) s property.	
P.PO Paul White	Abuse: Police Officer Paul White questioned § 87(2)(b)	
Q.PO Paul White	Abuse: Police Officer Paul White failed to provide § 87(2)(b) with a business card.	
R.POM Steven Torres	Abuse: Police Officer Steven Torres failed to provide § 87(2)(b) with a business card.	
S.PO Ariel Eusebio	Abuse: Police Officer Ariel Eusebio failed to provide § 87(2)(b) with a business card.	
T.LT Hugh Mackenzie	Abuse: Lieutenant Hugh Mackenzie failed to provide § 87(2)(b) with a business card.	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

### Case Summary

On April 30, 2020, § 87(2)(b) called the CCRB and filed this complaint.

On April 28, 2020, at approximately 6:26 PM, Police Officer Paul White, Police Officer Steven Torres, Police Officer Ariel Eusebio, and Lieutenant Hugh Mackenzie, all of the 52<sup>nd</sup> Precinct, stopped § 87(2)(b) for being double parked in front of 2525 Aqueduct Avenue in the Bronx (**Allegations A to D – Abuse of Authority – § 87(2)(g)**). PO White and Lt. Mackenzie questioned § 87(2)(b) about marijuana (**Allegations E and F – Abuse of Authority – § 87(2)(g)**). PO Eusebio frisked § 87(2)(b) (**Allegation G – Abuse of Authority – § 87(2)(g)**). PO White, PO Torres, PO Eusebio, and Lt. Mackenzie searched § 87(2)(b)'s vehicle (**Allegations H to K – Abuse of Authority – Unsubstantiated**). PO White, PO Torres, PO Eusebio, and Lt. Mackenzie allegedly damaged § 87(2)(b)'s vehicle (**Allegations L to O – Abuse of Authority – § 87(2)(g)**). PO White questioned § 87(2)(b) about firearms (**Allegation P – Abuse of Authority – § 87(2)(g)**). PO White, PO Torres, PO Eusebio, and Lt. Mackenzie failed to provide § 87(2)(b) with a business card (**Allegations Q to T – Abuse of Authority – § 87(2)(g)**).

§ 87(4-b) § 87(2)(g)

No arrests were made, or summons issued as a result of this incident.

The CCRB received four Body Worn Camera (BWC) videos of the incident (BR 06).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Paul White stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) Abuse of Authority: Police Officer Steven Torres stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (C) Abuse of Authority: Police Officer Ariel Eusebio stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (D) Abuse of Authority: Lieutenant Hugh Mackenzie stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that on April 28, 2020, at 6:26 PM, § 87(2)(b) (BR 01) was double parked in front of 2525 Aqueduct Avenue and was stopped by PO White (BR 02), PO Torres (BR 03), PO Eusebio (BR 04), and Lt. Mackenzie (BR 05). The officers stated that they observed § 87(2)(b) double parked on the left side of the road and made a joint decision to pull him over to address the double parking violation.

From 0:30 to 0:40 of PO White's BWC (BR 06), § 87(2)(b)'s car is seen double parked on the left side of the road. PO Torres', PO Eusebio's, and Lt. Mackenzie's BWC videos (BR 06) are consistent with PO White's BWC and provide an alternative angle.

**New York State Vehicle Traffic Law 1202 (a) 1** (BR 07) states that no person shall stop, stand, or park a vehicle on the roadway side of any vehicle stopped, standing, or parked at the edge or curb of a street.

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Paul White questioned § 87(2)(b)**

**Allegation (F) Abuse of Authority: Lieutenant Hugh Mackenzie questioned § 87(2)(b)**

After the officers stopped § 87(2)(b)'s (BR 01) vehicle, they all approached his car and § 87(2)(b) opened his windows. PO Eusebio told § 87(2)(b) that they stopped him because he was double parked and then asked for his license and registration. PO White stated that § 87(2)(b)'s vehicle smelled like marijuana and asked § 87(2)(b) if he was buying Marijuana or if he had any illegal items in the vehicle. § 87(2)(b) told PO White that his vehicle did not smell

like marijuana. § 87(2)(b) stated that he did not have any marijuana in his vehicle or on his person at the time of this incident and had not used marijuana in any capacity for a few years prior to this incident.

From 2:35 to 3:02 of PO White's BWC video (BR 06) PO White asks § 87(2)(b) if the officers can search the car because it smells like marijuana. § 87(2)(b) tells PO White that it does not smell like marijuana. PO White says that through his training and experience it smells like marijuana and to step out of the vehicle.

From 2:35 and 2:45 of Lt. Mackenzie's BWC video (BR 06) Lt. Mackenzie is heard asking § 87(2)(b) if there is anything illegal in the car.

PO White (BR 02) and Lt. Mackenzie (BR 05) stated that they smelled an odor of marijuana coming from § 87(2)(b)'s vehicle upon approaching it and after he rolled down his windows and therefore asked § 87(2)(b) questions regarding marijuana. The smell of Marijuana alone led the officers to believe that § 87(2)(b) was in possession of marijuana.

**Patrol Guide Procedure 212-11** (BR 08) states that an officer may ask a civilian an accusatory question if the officer has at minimum founded suspicion that criminal activity is afoot. Founded suspicion arises when there is a present indication of criminality based on observable conduct or information. Reasonable suspicion exists when the information known to the member of the service would make an ordinarily prudent and cautious police officer under the circumstances believe criminal activity is at hand. The officer must have a particularized and objective basis for suspecting the person stopped of the criminal conduct.

**New York State Penal Law 221** (BR 09) states that possession of varying amount of marijuana constitutes violations, misdemeanors, or felonies.

In **People v. Chestnut, 43 A.D.2d 260** (BR 10), the Supreme Court of New York held that where there is a reasonable belief before the search of an automobile begins that the automobile contains contraband or evidence of crime, this constitutes probable cause and a search of the vehicle may lawfully proceed without a warrant. Similarly, a warrant is unnecessary to search the occupants of the vehicle where there is probable cause to believe that they are guilty of a crime rather than merely a simple traffic infraction. The smell of marijuana, with nothing more, can be sufficient to provide officers with probable cause to search and automobile and its occupants.

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Police Officer Ariel Eusebio frisked § 87(2)(b)**

**Allegation (H) Abuse of Authority: Police Officer Paul White searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (I) Abuse of Authority: Police Officer Steven Torres searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (J) Abuse of Authority: Police Officer Ariel Eusebio searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (K) Abuse of Authority: Lieutenant Hugh Mackenzie searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (L) Abuse of Authority: Police Officer Paul White damaged § 87(2)(b)'s property.**

**Allegation (M) Abuse of Authority: Police Officer Steven Torres damaged § 87(2)(b)'s property.**

**Allegation (N) Abuse of Authority: Police Officer Ariel Eusebio damaged § 87(2)(b)'s property.**

**Allegation (O) Abuse of Authority: Lieutenant Hugh Mackenzie damaged § 87(2)(b)'s property.**

It is undisputed that after § 87(2)(b) (BR 01) was questioned, PO Eusebio (BR 04) asked § 87(2)(b) to step out of his vehicle and then conducted a frisk of § 87(2)(b)'s waist band area. PO Eusebio stated that when he approached § 87(2)(b)'s vehicle he smelled a strong odor of marijuana and therefore believed that § 87(2)(b) was in possession of marijuana. PO Eusebio immediately asked § 87(2)(b) to exit his vehicle and frisked § 87(2)(b) on his waist band area for the purpose of finding marijuana. He did not find any marijuana or contraband as a result of the frisk.

It is undisputed that after PO Eusebio frisked § 87(2)(b) PO White (BR 02), PO Torres (BR 03), PO Eusebio (BR 04), and Lt. Mackenzie (BR 05) searched the entirety of § 87(2)(b)'s vehicle for approximately 30 minutes. All four officers stated that they searched § 87(2)(b)'s vehicle because they smelled marijuana upon approaching his vehicle and they believed that he was in possession of marijuana. They conducted the search for the purpose of finding marijuana. The officers did not find any marijuana or contraband as a result of the vehicle search.

§ 87(2)(b) (BR 01) stated that he observed his vehicle after this incident and discovered damage that had been caused to multiple parts of it. The carpet in some areas of the vehicle was pulled up, the kick panel on the passenger's side was broken, the fabric lining the roof of the car was pulled away, and the plastic lining at the edge of the doors was pulled back. PO White (BR 02), PO Torres (BR 03), PO Eusebio (BR 04), and Lt. Mackenzie (BR 05) all denied that they observed or caused any damage to § 87(2)(b)'s vehicle.

Between 3:00 and 3:40 of PO Eusebio's BWC video (BR 06), PO Eusebio tell § 87(2)(b) to step out of his vehicle and frisks him on his waist band area. § 87(2)(b) repeatedly says that his vehicle does not smell like marijuana. Between 3:40 and 23:10, PO Eusebio searches the entirety of § 87(2)(b)'s vehicle including the front and back seats, the trunk, and the gas cap of the vehicle. Between 3:40 and 5:05 of Lt. Mackenzie's BWC video (BR 06), Lt. Mackenzie searches the front passenger seat of § 87(2)(b)'s vehicle. Between 3:20 and 3:55 of PO White's BWC video (BR 06), PO White reaches into § 87(2)(b)'s vehicle from the front passenger seat window, picks up a glove and searches inside of it. Between 4:30 and 22:55 of PO Torres' BWC video (BR 06), PO Torres searches the entirety of § 87(2)(b)'s vehicle including the front and back seats, under the hood, and the trunk of the vehicle. At no point throughout any of the BWC does any officer find marijuana or any other contraband inside § 87(2)(b)'s vehicle. At no point does any officer cause damage to § 87(2)(b)'s vehicle.

In **People v. Chestnut, 43 A.D.2d 260** (BR 10), the Supreme Court of New York held that where there is a reasonable belief before the search of an automobile begins that the automobile contains contraband or evidence of crime, this constitutes probable cause, and a search of the vehicle may lawfully proceed without a warrant. Similarly, a warrant is unnecessary to search the occupants of the vehicle where there is probable cause to believe that they are guilty of a crime rather than merely a simple traffic infraction. The smell of marijuana, with nothing more, can be sufficient to provide officers with probable cause to search an automobile and its occupants.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) alleged that the officers caused damage to his vehicle during their search of his vehicle. BWC video evidence clearly and completely captures the entire vehicle search from all of the officers' perspectives. At no point is any officer seen causing any damage to any part of § 87(2)(b)'s vehicle. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(g)

**Allegation (P) Abuse of Authority: Police Officer Paul White questioned § 87(2)(b)**

§ 87(2)(b) (BR 01) stated that towards the end of this incident, PO White asked him if he knew anyone with guns. § 87(2)(b) told him that he did not.

From 18:05 to 18:25 of PO White's BWC (BR 06), PO White engages in conversation with § 87(2)(b) and asks him if he knows anyone with a gun. § 87(2)(b) asks PO White if he means an illegal gun and PO White says yes. § 87(2)(b) says that he does not know anyone who owns an illegal gun.

PO White (BR 02) stated that he did not remember why he asked § 87(2)(b) if he knew anyone with a gun. He had no reason to believe that § 87(2)(b) had a weapon on him. He did not know if any other officer had any reason to believe that there was a gun on § 87(2)(b) or in the vehicle. He did not know if there were any weapons found in the vehicle as a result of the search.

**Patrol Guide Procedure 212-11** (BR 08) states that an officer may ask a civilian an accusatory question if the officer has at minimum founded suspicion that criminal activity is afoot. Founded suspicion arises when there is a present indication of criminality based on observable conduct or information. Reasonable suspicion exists when the information known to the member of the service would make an ordinarily prudent and cautious police officer under the circumstances believe criminal activity is at hand. The officer must have a particularized and objective basis for suspecting the person stopped of the criminal conduct.

§ 87(2)(g)

**Allegation (Q) Abuse of Authority: Police Officer Paul White failed to provide § 87(2)(b) with a business card.**

**Allegation (R) Abuse of Authority: Police Officer Steven Torres failed to provide § 87(2)(b) with a business card.**

**Allegation (S) Abuse of Authority: Police Officer Ariel Eusebio failed to provide § 87(2)(b) with a business card.**

**Allegation (T) Abuse of Authority: Lieutenant Hugh Mackenzie failed to provide § 87(2)(b) with a business card.**

§ 87(2)(b) (BR 01) stated that once the officers finished searching his vehicle, he found a business card which he was given by PO Torres during another vehicle stop which occurred on § 87(2)(b). On § 87(2)(b), PO Eusebio, PO Torres, and Lt. Mackenzie stopped § 87(2)(b) and conducted a vehicle search (CCRB case # § 87(2)(b)). § 87(2)(b) stated that the business card only had a phone number on it and no identifying information on it for any officers. § 87(2)(b) showed the card to PO White and asked if the officers were going to give him another business card with the officers' information on it. PO White responded with, "What do you need that for if you have one already?" None of the officers provided § 87(2)(b) with a business card.

PO White (BR 02) did not remember if § 87(2)(b) showed him a business card or if § 87(2)(b) had a business card which belonged to PO Torres. PO White stated that he was required to provide § 87(2)(b) with a business card. PO White did not offer or provide § 87(2)(b) with a business card and could not provide a reason why.

PO Torres (BR 03) did not offer or provide § 87(2)(b) a business card because he believed that PO White provided one to § 87(2)(b). PO Torres stated that he was required to provide § 87(2)(b) with a business card.

PO Eusebio (BR 04) did not offer or provide § 87(2)(b) with a business card and did not remember if any other officers offered him a business card. PO Eusebio stated that he was required to provide § 87(2)(b) with a business card but did not because he forgot to. He believed that another officer would have provided § 87(2)(b) a business card.

Lt. Mackenzie (BR 05) did not offer or provide § 87(2)(b) a business card because he believed that PO White offered § 87(2)(b) one and § 87(2)(b) refused to accept it.

From 17:50 to 18:30 of PO White's BWC (BR 06), § 87(2)(b) shows PO White a business card which he received from PO Torres during a prior incident. The card is not completely seen in the footage and it is unclear who the card belongs to. From 23:30 to 23:40, PO White tells § 87(2)(b) "I'd give you a card, but you already got one" and leaves the scene.

As per **New York City Administrative Code §14-174** (BR 11) officers are required to offer a business card to any person at the conclusion of law enforcement activity, including to any person who has been frisked or when a person's vehicle is searched which does not result in an arrest or summons.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to 2 other CCRB complaints and has been named as a victim in 10 allegations (BR 15).





